

CITY OF SAN JOSE, CALIFORNIA
Redevelopment Agency of the City of San Jose
50 W. San Fernando Street, Suite 900
San Jose, California 95110

STAFF REPORT

Hearing Date/Agenda Number

P.C.: 4-24-02 Item: 3.b.

File Number:

RCP 01-12-011

Application Type:

Conditional Use Permit

Council District:

3

Planning Area:

83

Assessors Parcel Number(s):

467-21-055

PROJECT DESCRIPTION

Completed by: Judie Gilli

Location: 87 E. Santa Clara Street

Gross Acreage: .07

Net Acreage: N/A

Net Density: N/A

Existing Zoning: CG

Existing Use: Restaurant – La Bella Café (indoors only)

Proposed Zoning: No Change

Proposed Use: Continued operation of existing restaurant with after-midnight use and sidewalk café until 2:00 AM., seven days a week

GENERAL PLAN

Completed by: JG

Land Use/Transportation Diagram Designation

Project Conformance:

Core Area

☒ Yes ☐ No

☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: JG

North: Commercial

Commercial General (CG)

East: Commercial

Commercial General (CG)

South: Commercial

Commercial General (CG)

West: Office

Commercial General (CG)

ENVIRONMENTAL STATUS

Completed by: JG

☒ Reuse of Downtown Supplemental EIR, Certified 04/27/99

☐ Exempt

☐ Environmental Impact Report complete on:

☐ Environmental Review Incomplete

☐ Negative Declaration circulated on :

☐ Negative Declaration adopted on:

FILE HISTORY

Completed by: JG

Annexation Title: Original City

Date: N/A

HISTORIC STATUS: Contributing Structure

Completed by: JG

REDEVELOPMENT AGENCY RECOMMENDATIONS AND ACTION

☐ Approval

☒ Action

Approved by: _____ Date: _____

☒ Conditional Approval

☐ Recommendation

☐ Denial

Approved by: _____ Date: _____

☐ Uphold Director's Decision

PROPERTY OWNER

Wagner Bldg.
1632 Terrace Way
Walnut Creek, CA 94596

BUSINESS OWNER

Ann Marie Scott
87 East Santa Clara street
San Jose, CA 95113

PROJECT DESCRIPTION

La Bella Cafe is located at 87 East Santa Clara Street in the General Commercial Zoning District and designated Core on the San Jose 2020 General Plan Land Use/Transportation Diagram. The site, like all surrounding properties, is within the Commercial General (CG) Zoning District. The owner of La Bella Café, an existing eating establishment is requesting a Conditional Use Permit (CUP) to allow a sidewalk cafe and operation of the restaurant until 2:00 AM daily. Currently, La Bella operates as an indoor restaurant until 3:00 PM. The applicant proposes to continue their indoor operations with the addition of a sidewalk café, from 7:30 AM until 2:00 AM. The Zoning Ordinance 20.40.500 requires that any establishment, other than office uses, in any Commercial District, obtain a CUP in order to operate between the hours of 12:00 AM and 6:00 AM. The Zoning Ordinance also requires that a Sidewalk Café permit be obtained for all uses that include outdoor café. Whenever applications, for the same site, have been filed for one or more Development permits, such Development Permit may be reviewed and acted on in a unified process. In this case, the approval of the subject CUP will review both the hours of operation and sidewalk café. The subject CUP pertains to the facility's proposed hours of operation and sidewalk café.

GENERAL PLAN CONFORMANCE

The project site is designated Core Area on the San Jose 2020 Land Use/Transportation Diagram. This designation allows a range of "office, retail, service, residential, and entertainment uses in the Downtown Core Area." Given the project's downtown location, away from residential or other sensitive uses, the proposed is consistent with the General Plan and the Core Area designation. Thus, no further environmental review is necessary.

ENVIRONMENTAL REVIEW

Pursuant to Section 15180 of the 2001 CEQA Guidelines, the City of San Jose has determined that the project does not involve new significant environmental impacts beyond those analyzed in the Final Supplemental Environmental Impact Report (SEIR) entitled "Downtown Strategy Plan" certified by City Council Resolution No. 68839 on April 27, 1999.

ANALYSIS

Through the subject CUP, the applicants propose to operate the restaurant and outdoor cafe between 7:30 AM and 2:00 AM, seven days a week. Currently, La Bella operates as an indoor restaurant until 3:00 PM. Such uses are subject to the City Council's 24-hour Use Policy. The objective of these policies is to ensure that late-night uses, are compatible with surrounding land uses. A key provision of these policies is to ensure that entertainment and after-midnight uses not be approved unless the facilities can operate without detriment to nearby residential uses and the general welfare of the surrounding area. The following issues address the project's operational compatibility within its surroundings.

Land Use Compatibility

La Bella Café is surrounded by commercial uses in all directions. The restaurants adjacent to Bella Café, Falafel House and Muchos, also operate until 2 AM daily with outdoor cafes. Based on this

composition of surrounding uses and similar hours of operation, the subject property is well suited to as a restaurant with after-midnight hours of business. The San Jose Police Department reports that there has not been a history of disturbances or criminal activity in the past year.

Parking

The subject site is located in the Downtown Parking Management Zone and its parking requirements are governed by Section 20.90.510 of the Municipal Code. Based on the provisions of Section 20.90.510, parking is not required for public eating or drinking establishments and nightclubs. The site, which is fully developed with the existing building, does not include any off-street parking; however, nearby parking facilities (i.e., public garage, on-street parking) are able to serve patrons and employees of the facility.

FACTS

Staff recommends that the Planning Commission review the requested Conditional Use Permit and include the following facts, findings and conditions in its Resolution:

The Planning Commission determines that the following are the relevant facts regarding the proposed project:

1. This is a Conditional Use Permit to allow La Bella Café to operate the restaurant and outdoor cafe between 7:30 AM and 2:00 AM, seven days a week.
2. La Bella currently operates as an indoor restaurant until 3:00 PM.
3. The project site is approximately 0.07 acres and is located in the Commercial General (CG) Zoning District.
4. The project site is designated Core Area on the San Jose 2020 General Plan Land Use/Transportation Diagram.
5. The San Jose 2020 General Plan provides that restaurants, bars and nightclubs may be located within the downtown Core Area, provided that such uses do not adversely impact existing or planned uses or conflict with other San Jose General Plan objectives.
6. The City's 24-hour Use Policy requires that all commercial that operate between the hours of 12:00 midnight and 6:00 AM obtain a Conditional Use Permit.
7. The environmental impacts of this project were addressed by Final Supplemental EIR entitled, "Downtown Strategy Plan," adopted by City Council Resolution No. 68839 on April 27, 1999.
8. The subject site is surrounded by commercial uses.
9. The San Jose Police Department reports that there has not been a history of disturbances or criminal activity during the project's operation in the past year.

10. The subject site is located in the Downtown Parking Management Zone. Based on the parking provisions for the Downtown Parking Management Zone (Municipal Code, Section 20.90.510), parking is not required for the proposed eating and drinking establishment uses.
11. The project site is adequately served by public and private utility services.
12. The project site is served by the existing roadway network, which consists of Santa Clara Street; a four-lane major collector street and Highway 87; a major freeway.
13. The proposed project does not include any exterior improvements.
14. The proposed location of the chairs and tables on the sidewalk allows for an eight-foot pedestrian access way on the sidewalk.

RECOMMENDATION

Subject to testimony provided at the public hearing, it is recommended that the Planning Commission consider the following actions and approve the project subject to the conditions stated below.

Based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location will not:
 - a. **Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area** because the uses proposed eating establishment uses are consistent with the commercial uses of the surrounding area; or
 - b. **Impair the utility or value of property of other persons located in the vicinity of the site** because the current restaurant land use will not alter or diminish the value of adjacent restaurants or businesses, raise new safety concerns, or create visual impacts; or
 - c. **Be detrimental to public health, safety or general welfare** because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, "Downtown Strategy Plan EIR" (Resolution No. 68839) and police reports of past experience in the area corroborate that such use will not adversely affect the public health, safety or general welfare; and
2. **The proposed site is adequate in size to accommodate the development features prescribed in Title 20 of the SJMC, or as is otherwise required in order to integrate said use with the uses in the surrounding area** because the project site already includes improvements needed for the proposed uses which are compatible with the uses in the surrounding area; and
3. The proposed site is adequately served:
 - a. **By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate** in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and

- b. **By other public or private service facilities as are required** in that the scale of the project will not necessitate expansion of existing service facilities.

This Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. Upon issuance of this Conditional Use Permit, the project will comply with the provisions of the Commercial General (CG) Zoning District in that the operation of a restaurant between the hours of 12:00 AM and 6:00 AM requires the approval of a Conditional Use Permit.
2. The project conforms to the with the San Jose 2020 General Plan in that it proposes the operation of an eating establishment within the downtown Core Area and is located away from residential development, or other sensitive uses.
3. This project is consistent with the City Council Policies on 24-Hour Use in that it proposes the operation of an eating establishment, with after midnight use, in an area of downtown predominately developed with commercial and office land uses.
4. This property is appropriately located for the subject activities due to its location in the downtown Core Area, its distance from existing or planned residential uses, and its operational history as determined by the Police Department.
5. The project conforms to the California Environmental Quality Act in that is does create impacts not previously addressed in the Downtown Strategy Plan Final Supplemental EIR.
6. The proposed use complies with the parking provisions of Downtown Parking Management Zone, as described in Municipal Code, Section 20.90.500.
7. The issuance of the Permit will not create a nuisance due to the conditions of approval prescribed for this Permit; and
8. Would preserve and enhance the character of the surrounding area in that the proposed use in is keeping with the adjacent uses; and
9. Adequately protects the convenience and safety of pedestrians, property owners, occupants, customers, residents or tenants of offices, shops or dwellings in the vicinity of the project in that the proposed location of the umbrellas, tables, chairs and other portable appurtenances shall be confined to the area two feet by the length of the occupancy frontage, providing an eight-foot pedestrian access way on the sidewalk; and
10. Would not result in any significant adverse land use impacts because the proposed land use will not change from the existing land use.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purposes specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions. Each and all of which conditions

shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all requirements of the below enumerated precedent conditions all have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. Acceptance and Payment of Recording Fees. Within sixty (60) days from the date of this Resolution, the property owner(s) shall accept this permit by signing the form provided hereto, and paying the fee for its recordation by the Recorder of the County of Santa Clara.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

1. Water Pollution Control Plant Notice. This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.
2. Nuisance. This use shall not be operated in a manner that creates a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.
3. Exterior Improvements. No exterior modifications are approved with this Permit. Any exterior improvements are subject to approval by the Executive Director of the Redevelopment Agency and the issuance of appropriate City permits, as required.
4. Hours of Operation. The restaurant with outdoor sidewalk cafe shall be limited in operation from 7:30 AM to 2 AM, daily.
5. Security. The operator of the eating establishment shall provide adequate security at all times during operation.
6. Trash, Refuse, Garbage and Litter.
 - a. Cleaning shall including keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontages.

- b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, seven days a week.
 - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
 - d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way.
- 7. Umbrellas, tables, chairs and other portable appurtenances shall be confined to the area two feet in depth from the property line, along the length of the occupancy frontage.
 - 8. Equipment for the service of customers, including but not limited to trays and carts, eating or drinking utensils, linens and cooking appliances shall not be placed or maintained on any portion of the sidewalk area, unless the sidewalk café is adequately separated from pedestrian traffic.
 - 9. All umbrellas, tables, chairs and other portable appurtenances shall be removed from the area at the end of each business day.
 - 10. At least one covered outdoor trash container shall be provided in the sidewalk café area during the hours of operation and shall be maintained in a clean and sanitary condition.
 - 11. The applicant shall maintain the area in a clean and sanitary condition during business hours.
 - 12. The applicant shall keep that portion of the sidewalk area not permitted to be occupied by umbrellas, tables, chairs and other portable appurtenances free of obstructions at all times.
 - 13. The hours of operation of a sidewalk café shall be limited to the hours of operation of the associated establishment.
 - 14. No amplified music shall be used within a sidewalk café. At no time shall any music originating from any part of the Premises create a nuisance.
 - 15. Dancing is not permitted in the sidewalk café.
 - 16. The applicant must at all time comply with all federal, state and local laws regarding the sale, service and consumption of alcohol and operation of the Premises.
 - 17. The Applicant shall submit to the City's Risk Manager a signed agreement to defend, indemnify, and hold harmless the City and all of its officers, agents, or employees from any liability for damages resulting from any and all operations under a permit granted pursuant to Chapter 2 Part 12.
 - 18. The applicant shall obtain and maintain in full force all of the necessary insurance coverage for the full term of the permit. The level of coverage shall be one million dollars for general liability.

19. This Sidewalk Café Permit may not be transferred or assigned.
20. The sidewalk area shall not be painted, landscaped or altered in any way without prior written approval of the Executive Director of the Redevelopment Agency.
21. The Permit does not constitute a deed or grant of an easement by the City and is revocable at any time.

CONDITIONS SUBSEQUENT

1. Revocation, Suspension, Modification. This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission or by the City Council on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, of the Chapter 20.100.350, of Title 20, of the San Jose Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use presently conducted creates a nuisance.
2. Compliance Review. A Compliance Hearing may be required at the discretion the Planning Commission at any time during the period of time this permit is in effect.
3. Time Limit. This Conditional Use Permit expires and has no further force or effect five (5) years from the date of its approval. A Compliance Hearing at the discretion of the Planning Commission may be required at any time during the term of this Permit.
4. Renewal. The Permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Executive Director of the Redevelopment Agency. In order to be timely, an application for renewal must be filed more than 90 days, but less than 180 days, prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.